FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Criminal Appeal No.447 of 1997
With
Criminal Appeal No.655 of 1997

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

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Shri A.M.Shringarpur, APP for State/appellant in Cr.Appeal No.447 of 1997 and respondent/State in Cr.Appeal No.655 of 1997.

Shri Arfan Sait for Shri N.N.Gavankar for respondent in Cr.Appeal No.447 of 1997 and appellant in Cr.Appeal No.655 of 1997.

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CORAM: V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATE : 7th JULY, 2005

P.C.

1. Criminal Appeal No.655 of 1997 is filed by the accused person against his conviction under Section 304 of Indian Penal Code and sentencing him to suffer R.I. for 10 years. This appeal, therefore, is required to be heard by the learned Single Judge of this Court.

2. However, Criminal Appeal No.447 of 1997 is filed by the State seeking

enhancement of sentence as imposed by the learned Trial Judge under Section 304 of Indian Penal Code of 10 years' R.I. The contention raised on behalf of the State for enhancement of sentence is that the injuries are more in number and assault was very severe. However, the learned Trial Judge has, on appreciation of attending circumstances which can spell out provocation on the part of the complainant, has chosen to punish the accused to suffer R.I. for 10 years. Such exercise of discretion cannot be called as non-judicious or so arbitrary so as to require interference in the matter of punishment, which is a matter of discretion of the learned Trial Judge. The Trial Judge has in this case appreciated the entire evidence on record while considering the sentence. In our opinion, there is no reason to interfere in the appeal for enhancement and the same is hereby dismissed.

3. The appeal against conviction was taken up for hearing along with the appeal for enhancement of sentence against the accused. We have dismissed

the appeal for enhancement of sentence, and therefore, what remains to be argued is the conviction for 10 years under Section 304 of Indian Penal Code, which is to be heard by the learned Single Judge. Hence, list the Criminal Appeal No.655 of 1997 before the appropriate single bench for final hearing.

(V.G.PALSHIKAR, J)

(R.C.CHAVAN, J)